

C H A P T E R 9

Security and Mortgages

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§9.1. **Preservation of security.** During the 1961 SURVEY year, the only decision and only statute of interest both related to the leading case of *Pineo v. White*.¹ In the *Pineo* case a mortgage and note were held by husband and wife as tenants by the entirety. The note was paid in full and the note and mortgage were surrendered to the owners of the property, together with a discharge signed only by the wife. The husband refused to sign, and the question was whether the discharge was sufficient to remove the lien of the mortgage. The Supreme Judicial Court held that the payment of the note terminated the interest of the mortgagee without any discharge, that the mortgagor was entitled to a discharge in order to remove a cloud on the record title, but that the discharge in question was not sufficient because not signed by the husband.

In the recent case of *Piea Realty Co. v. Papuzynski*,² mortgages and notes were given in 1954. New mortgages and notes were executed in 1956 with the intention that the security of the 1954 mortgages was to be preserved. The 1956 mortgages and notes and discharges of the 1954 mortgages were delivered to the owner of the property for recording, but the mortgages and discharges were withheld from record, and in the meantime the premises were sold. The Supreme Judicial Court held that, although under the doctrine of *Pineo v. White* the new notes had the effect of discharging the old mortgages, nevertheless, since the mortgage would not have the same security as the 1954 mortgages had given him, the mortgagee was entitled to retain the 1954 mortgages.

With a view to correcting the situation caused by the reluctant spouse in the *Pineo* case, the General Court enacted Chapter 275 of the Acts of 1961 so as to provide that a discharge signed by one of two tenants by the entirety is effective unless the other within ten years records a notice to the effect that he still retains his interest. The effect

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§9.1. 1 320 Mass. 487, 70 N.E.2d 294 (1946).

2 342 Mass. 240, 172 N.E.2d 841 (1961).

of this statute, of course, is that after ten years the discharge signed by one tenant by the entirety becomes sufficient, unless the other records.³

³ EDITOR'S ERRATUM: The comment in the 1960 ANNUAL SURVEY in Section 9.4 on Acts of 1960, c. 173, was in error. The act, in adding a new Section 20A to G.L., c. 255B, requires that the holder of a note on an automobile secured by mortgage or conditional sale contract file in a suit for a deficiency judgment an affidavit of the purchaser of the repossessed motor vehicle, stating the purchase price and the date and place of sale. Thus the filing of the affidavit seems to be a condition precedent to the maintenance of the deficiency judgment. The earlier comment interpreted the act to require recording of the purchaser's affidavit. The author is indebted to Jerome D. Goodman, of the Boston Bar, for pointing out this error.

